



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY - 4 2012

VIA FIRST CLASS MAIL

Attorney General Gary Kenneth King
PO Box 1209
Carlsbad, NM 88221

RE: MUR 6517

Dear Mr. King:

On December 22, 2011, the Federal Election Commission ("Commission") notified you and King for Congress ("the Committee") of a complaint filed against you and the Committee, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On April 24, 2012, based upon the information contained in the complaint, and information provided by you, the Commission decided to dismiss the complaint and close its file in this matter.

The Commission encourages you and the Committee to review the Factual and Legal Analysis, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. A copy of the Factual and Legal Analysis is enclosed for your information and future reference.

The Commission reminds you and the Committee to take steps to ensure that your committee is in compliance with 2 U.S.C. §§ 432(a), 433(c), and 434(a)(1) concerning the responsibilities of committee treasurers. For further information on the Act and Commission regulations, please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100 or your Reports Analysis Division analyst at (202) 694-1130.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

12044313232

MUR 6517
Gary Kenneth King
Page 2

If you have any questions, please contact Kim Collins, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman
General Counsel



BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

12044313233

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENTS: Gary Kenneth King
King for Congress (Terminated)**

MUR 6517

I. INTRODUCTION

This matter was generated by a complaint filed by Bruce Malott alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") by Gary Kenneth King and King for Congress (Terminated).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Gary Kenneth King is currently New Mexico's Attorney General and, in 2004, was a candidate for the House of Representatives in New Mexico's Second Congressional District. Bruce Malott was listed as the treasurer of King's now-terminated principal campaign committee King for Congress (the "Committee"). Malott alleges that King and the Committee violated the Act by continuing to file reports with the Commission until the Committee's termination on April 15, 2010 under Malott's electronic signature, even though Malott orally notified King of his resignation within months of King's 2004 electoral defeat, in January 2005. Malott alleges that, following his resignation, respondents violated the Act by (1) failing to file an amended Statement of Organization naming a new treasurer pursuant to 2 U.S.C. § 432(a); (2) making campaign expenditures while the treasurer position was vacant in violation of 2 U.S.C. § 433(c); and (3) filing numerous reports with the Commission using Malott's unauthorized signature in violation of 2 U.S.C. § 434(a)(1).

1 Malott claims that, at a state prayer breakfast event in January 2005, he informed King
2 that he was resigning as treasurer "effective that day." Complaint at 7, ¶27. According to
3 Malott, he told King that he was resigning because the election was over and "he had closed
4 out the Committee's 2004 Year-End Report." *Id.* Despite Malott's alleged resignation, the
5 Committee continued to use Malott's electronic signature on reports filed with the
6 Commission. *Id.*, at 9-10, ¶¶35-36. Malott maintains that, until April 2011, he did not know
7 the Committee was filing reports with his electronic signature. *Id.*, at 10, ¶40.¹

8 King acknowledges that Malott served as treasurer for the Committee. King asserts,
9 however, that Malott did not resign; rather, King maintains that Malott delegated filing
10 authority to King in January 2005:

11 King and Malott discussed the fact that the only activity left to the campaign was the repayment of a bank loan to
12 the campaign and payment of bank fees. King and Malott discussed the fact that there would be no further
13 solicitation of contributions and that King would use personal funds to make all payments. Malott informed
14 King that as long as this was the case, Malott saw no need to review and approve each quarterly report and
15 delegated authority to King to file the reports on his behalf. King and Malott agreed that if there was any
16 activity that did not conform to this plan, King would inform Malott.

17 Response at 2, ¶3. In further support of King's claim that Malott remained the Committee's
18 treasurer, King asserts that his search of the Committee's records did not uncover any written
19 evidence of a resignation. *Id.*, at 4, ¶18.

20 King claims that he was unaware of Malott's asserted resignation until June 2011,
21 when King read a newspaper article, *see supra* n.1, which is referenced in the complaint as an
22 attachment. King also points out that Malott previously served as a treasurer for a number of

¹ Malott notes that his involvement with the Committee and the potential violations of the Act are recounted in a newspaper article, published in June 2011. Complaint, Attachment 1. *See* Thomas J. Cole, *AG used Malott's signature*, ALBUQUERQUE JOURNAL, June 18, 2011, at A1. The article cites King as saying his "interaction with Malott ended after the 2004 congressional campaign." *Id.* Phil Sisneros, King's spokesman, allegedly told the article's author that Malott's signature continued to appear on the report because "King probably called up forms with Malott's signature, filled them out, then hit 'send.'" *Id.*

1 federal candidates and had experience with federal campaign finance law.² *Id.*, at 4, ¶16.

2 Thus, King asserts, had Malott in fact resigned, he would have worked with him to find a
3 successor treasurer. Response at 5, ¶20.³

4 From February 1, 2005 through April 6, 2010, the Committee filed 34 quarterly and
5 year-end reports, 10 amendments, and one Termination Report. Each filed report listed
6 Malott as the Committee treasurer. During this time, the Committee reported little activity
7 other than payments for a \$121,731.75 bank loan. Among its other activity, the Committee
8 paid a \$135.00 Administrative Fine on June 4, 2007 for filing its 2006 Year-End report seven
9 days late. *See* AF# 1717 (King for Congress).⁴ The Commission granted the Committee's
10 termination request on April 15, 2010, sending the Termination Approval letter to Malott at
11 the Committee's mailing address.

12 B. Legal Analysis

13 Under the Act, every political committee must file a Statement of Organization that
14 provides the name and address of the committee's treasurer. 2 U.S.C. §§ 432(a) and 433(a)
15 and (b). Each treasurer must file a report of the committee's receipts and disbursements in
16 accordance with the provisions of 2 U.S.C. § 434, and must verify that he or she has examined

² According to reports filed with the Commission, Malott served as treasurer for Sam Bregman for Congress from 1999 to 2004, and for the Committee to Elect Michelle Lujan Grisham from 2007 to 2009.

³ King maintains that Malott is named in a state "Fraud Against Taxpayers" action filed in New Mexico and "may be under federal investigation for participation in pay-to-play schemes." Response at 5, ¶22. King avers that Malott filed a complaint against King to create a possible conflict of interest that would prevent King, as attorney general, from investigating ethics claims against Malott. King also states that Malott may have filed the complaint "in retribution" because King's office issued an advisory opinion that precluded Malott from claiming reimbursement for legal fees. *Id.*, at 6, ¶12.

⁴ The Committee reported paying off its bank loan on December 19, 2008 using King's personal funds. In April 2010, the Committee converted an \$80,000 personal loan made by King to a contribution from the candidate.

1 the report and, to the best of the treasurer's knowledge and belief, the report is true, correct
2 and complete. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.18(g). Committees must report any
3 change in a treasurer's status within 10 days by filing an amendment to the Statement of
4 Organization, and committees are not permitted to raise or spend funds when the treasurer's
5 office is vacant. 2 U.S.C. §§ 432a(a) and 433(c); 11 C.F.R. § 102.2(a)(2).⁵

6 The facts here are in sharp conflict. Regardless, however, of whether Malott resigned
7 or delegated his filing authority, the Act and Commission regulations require that a treasurer
8 or other signatory has examined and verified all the disclosure reports submitted to the
9 Commission. 11 C.F.R. § 104.18(g). *See* 2 U.S.C. § 434(a)(11). Thus, even assuming that
10 King is correct and Malott did not resign from his post as the Committee's treasurer, the
11 Committee used Malott's electronic signature on reports that he did not personally review and
12 certify as Commission regulations instruct.

13 Nevertheless, use of further Commission resources to resolve the disputed facts is not
14 warranted in view of the Committee's status. *See* MUR 6298 (Vernon Jones for Georgia)
15 Factual and Legal Analysis (dismissing MUR as a matter of prosecutorial discretion where
16 "there is no existing reporting entity that would agree to take [remedial] actions" for possibly
17 unauthorized physical signature of committee's treasurer). Like the committee in MUR 6298,
18 the Committee here is no longer an existing reporting entity under the Act because it
19 terminated in April 2010. As a consequence, in this instance, further enforcement action is
20 not warranted.

⁵ Ordinarily, to effect his or her resignation, a treasurer must submit to the Commission an amended Statement of Organization under his or her signature. 2 U.S.C. § 432(a). If a committee is unable to amend its Statement of Organization in this manner, it may notify the Commission, through a letter or Form 99 electronic entry, of the treasurer's resignation.

- 1 Accordingly, and because, under EPS, MUR 6517 is a low-rated matter, the
- 2 Commission exercises its prosecutorial and dismisses this matter. *See Heckler v. Chaney*,
- 3 470 U.S. 821 (1985).

12044313238